IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8279 of 1996
With
SPECIAL CIVIL APPLICATION No. 8283 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT LAW SOCIETY - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
Special Civil Application NO. 8279/96
MR SAURIN MEHTA FOR NANAVATI & NANAVATI for Petitioner(s) : 1,
MS MANISHA L SHAH AGP for Respondent(s) : 1 - 2.
MR YATIN SONI for Respondent(s) : 3,
Special Civil Application NO. 8283/96
MR SAURIN MEHTA FOR NANAVATI & NANAVATI for Petitioner (s) :1,
MS MANISHA L SHAH AGP for Respondent(s):1-2.
MR JR NANAVATI for Respondent(s):3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/11/2006

ORAL JUDGMENT

1. Since common question of law and facts arise these petitions have been heard together and are being disposed of by common order.

2. Petitioners challenge two separate orders both dated 7th October, 1996 produced at Annexure A to the petitions.

2.1. Petitioners are law colleges imparting education in law in the State of Gujarat. They received partial grant for the relevant period from the Government. However, Government was of the opinion that under certain heads, grant released in favour of the petitioners were in excess of their entitlement. By two separate impugned orders, therefore, petitioners were called upon to refund to the Government sum of Rs.2,71,983/- and Rs.2,93,843/- respectively.

2.2. From the perusal of the impugned orders, it

can be seen that certain adjustments were to be made in the grants payable to the petitioners. Impugned orders record that accounts for the years 1990-1991 to 1994-1995 have been finalised after making necessary adjustments. Accordingly in the years 1991-1992 to 1994-1995 certain amounts were paid in excess of the entitlement of the petitioners towards the grant. Impugned orders, therefore, seek to recover such excess payments made to the petitioners.

3. Learned advocate Shri Saurin Mehta appearing for the petitioners submitted that the respondents have not given any details of amounts paid as well as amounts payable towards grant and have taken a unilateral decision without disclosing the breakup of such amounts to the petitioners.

3.1. He further submitted that before passing the impugned orders of recovery Government granted no hearing to the petitioners and no notice was issued nor any opportunity of being heard granted to the petitioners in any other manner. He, therefore, submitted that the impugned action is opposed to principles of natural justice.

3.2. It was also contended that recovery is grossly belated. For the amounts paid in the year 1991-1992 recovery was sought in October, 1996. He, therefore, submitted that the impugned action suffers from delay, laches and acquiescence.

4. On the other hand learned AGP Ms. Shah supported the impugned orders. She submitted that certain over- payments were made to the petitioners by the Government. Such over payments which were not part of the entitlement of the petitioners, had to be adjusted and recovery had to be made.

4.1. She relied on the decision of the learned Single Judge of this Court dated 24th March, 2003 passed in Special Civil Application No.11164/01. She pointed out that under similar circumstances, learned Single Judge in the said decision had upheld the recovery of over-payments made to the petitioner therein. She additionally pointed out that the decision of the learned Single Judge was upheld by the Division Bench by judgment dated 1/2/2005 passed in Letters Patent Appeal No.1105/03. Only opportunity the Division Bench granted to the petitioner was to make representation to the

Commissioner of Higher Education.

5. Having heard the learned advocates appearing for the parties, I find that learned Single Judge of this Court in the above mentioned decision dated 24th March, 2003 has upheld the right of the Government in seeking recovery of over payments of grant. Fact situation so far as the question of recovery is concerned is similar in present petitions. To the extent of actual over payment, the petitioners cannot escape liability of refunding the same. I am unable to uphold the contention of learned advocate for the petitioners that the action is barred by delay, laches and acquiescence. No provision of law has been pointed out to suggest any period of limitation for seeking recovery of over-payment made by the Government. In any case impugned orders seek to recover over payments without additional burden of interest and recovery is sought after adjusting certain amounts as per rules. Considering all these aspects of the matter action of the Government to recover the excess payment cannot be held illegal solely on the ground of delay.

6. Learned advocate for the petitioners however, is

justified in pointing out that unlike in the case before the learned Single Judge which culminated into the above mentioned decision dated 24th March, 2003, in the present petitions the petitioners received no opportunity to put forth their cases. In the decision of the learned Single Judge, the petitioner therein was granted reasonable time for raising objections against proposed action of recovery. After considering the objections of the petitioner therein, Government had passed final order of recovery.

7. Fact of the matter, therefore, is that the petitioners should have reasonable opportunity of representing their case before the Government regarding the quantification of the proposed recovery and other aspects of the matter. Learned advocate for the petitioners is also justified in pointing out that though the petitioners may have details about payments already made, they would not have any details about the amount due and payable to them as indicated by the Government in the impugned orders.

8. Considering all these aspects of the matter to give a meaningful opportunity to the petitioners to

represent their case before the Government, following directions are given:

The Government shall supply to the petitioners details of the break-up of the grant amounts payable to the petitioners as per the Government calculations as indicated in column 3 of the impugned orders. Upon supplying of such details, the petitioners shall have 30 days to raise their objections against proposed recovery. After taking into consideration the objections of the petitioners, Government will pass fresh order of recovery if found necessary unmindful of the impugned orders.

9. With these observations and directions, the petitions are disposed of. Rule is made absolute to the above extent. No costs.

(Akil Kureshi, J.)

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